1967

Walker Bank & Trust Company, Executor of the Estate of Herbert E. Sargent, Deceased v. The State Tax Commission of Utah : Brief of Plaintiff

IN THE SUPREME COURT OF THE STATE OF UTAH

WALKER BANK & TRUST COMPANY, Executor of the Estate of HERBERT E. SARGENT, Deceased,

Plaintiff,

vs.

THE STATE TAX COMMISSION OF UTAH,

Defendant.

BRIEF OF PLAI

Review from decision of the St
Utah, Honorable Donald T. Adams

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WALKER BANK & TRUST COMPANY, Executor of the Estate of HERBERT E. SARGENT, Deceased,

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Case No. 10629

BRIEF OF PLAINTIFF

STATEMENT OF NATURE OF CASE

This is a matter before the Supreme Court of the State of Utah requesting review of the State Tax Commission's decision that "stepchildren in *loco parentis*" to a decedent do not qualify for the inheritance tax exemption allowed for certain transfers to members of the immediate family because they are not "children" within the meaning of Sec. 59-12-2 Utah Code Annotated (1953).

DISPOSITION BEFORE THE STATE TAX COMMISSION

The Tax Commission disallowed an exemption claimed by the executor of the estate of the decedent for bequests to decedent's stepchildren. A hearing took place December 15, 1965 upon the executor's petition for a refund at which the exemption was disallowed and the refund denied. Upon a stipulation of facts by the attorney for the Commission and the attorney for the executor of the estate the Commission rendered its final decison April 27, 1966 disallowing the exemption and denying the refund.

RELIEF SOUGHT ON THIS REVIEW

The executor seeks a judicial clarification of the statutory exemption by interpreting the word "children" used in Sec. 59-12-2 Utah Code Annotated (1953) to include stepchildren who are in *loco parentis;* and a reversal of the Tax Commission's decision disallowing the exemption to stepchildren in *loco parentis* to the decedent and its denial of the requested refund.

STATEMENT OF FACTS

Herbert E. Sargent, a resident of Salt Lake City, Salt Lake County, State of Utah, Died November 27, 1963; named in his will as heirs were three surviving stepchildren, Edward R., William Y., and Richard L. Bywater. Although not legally adopted these children had been raised by the deceased in *loco parentis* contin-

nously from the date of his marriage to their natural mother on March 29, 1931. Walker Bank and Trust Company, the executor of the estate of the deceased, prepared an estate tax return and filed the same with the State Tax Commission claiming therein the statutory exemption permitted for bequests to "children" as provided in Section 59-12-2 Utah Code Annotated (1953).

The State Tax Commission disallowed the exemption on the grounds that unadopted stepchildren who are in *loco parentis* to a decedent do not qualify as "children" within the meaning of the aforementioned statute.

The executor of the estate requested a refund in the sum of $1,200.00 under the exemption statute. The request was denied, whereupon the executor petitioned for a hearing before the State Tax Commission to determine whether the exemption should be allowed. A hearing on December 15, 1965 resulted in a continued disallowance of the exemption by the State Tax Commission.

Upon a stipulation of facts by the State Tax Commission and the executor the Commission rendered its formal decision on the 27th day of April, 1966 denying the claimed refund for the reason that persons not natural or adopted children of a decedent who are in *loco parentis* to him or her during his or her lifetime do not qualify as "children" under the provisions of Section 59-12-2 Utah Code Annotated (1953) and are, therefore, not entitled to the exemption provided for "chil-

dren." The executor of the estate petitioned for a review of the State Tax Commission's decision.

POINT I

SECTION 59-12-2 UTAH CODE ANNOTATED (1953) ON ITS FACE IS BROAD ENOUGH TO ENCOMPASS *STEPCHILDREN WHO ARE IN LOCO PARENTIS.*

59-12-2 Utah Code Annotated (1953) provides:

> "Amount of tax on net estates. — A tax equal to the sum of following percentages of the market value of the net estate shall be imposed upon the transfer of the net estate of every decedent, whether a resident or nonresident of this state:
>
> Three per cent of the amount by which the net estate exceeds $10,000 and not to exceed $25,000, except where property not exceeding in value the sum of $40,000 goes to the husband, wife and/*or children* of the deceased or any or all of them descent, devise, bequest or transfer directly or through a trustee, then in such case the exemptions shall be the amount so going not to exceed $40,000;
>
> Five per cent of the amount by which the net estate exceed $25,000 and does not exceed $75,000 except where property not exceeding in value the sum of $40,000 goes to the husband, wife and/*or children* of the deceased or any or all of them by descent, devise, bequest or transfer directly or through a trustee, then in such case the exemption shall be the amount so going not to exceed $40,000, but on the excess of $40,000 the rate shall be as herein provided; . . . . . " Emphasis supplied.

This section of the Utah Code dealing with exemptions is derived from Chapter 113 of the Laws of Utah of 1947. The legislative history of this law fails to reveal the intent of the legislature at the time of its passage. (1947 Senate Journal, pp 135, 205, 264, 352, 391; 1947 House Journal, pp 388, 437, 471). Without any guidepost in addition to the statute itself, the same should be applied to include stepchildren in *loco parentis* as well as natural children. *Pacific First Federal Savings & Loan Association v. Pierce Company,* 27 Wash. 2d 347, 178 P. 2d 351; *Denny v. Wooster,* 175 Wash. 272, 27 P. 2d 328.

There are no judicial decisions of the court of this state interpreting the statutory provisions with which the instant case is concerned. Therefore, an examination of the actions of the legislatures of other states and an inquiry into the judicial interpretations of the legal relationship of "children," "stepchildren" and "children in *loco parentis*" seems appropriate and will identify the guideposts necessary to a proper resolution of this particular case and a clarification of the Statute.

POINT II

SIMILAR TAXING STATUTES OF OTHER JURISDICTIONS SUPPORT THE VIEW THAT STEPCHILDREN SHOULD BE EQUATED WITH NATURAL CHILDREN UNDER THE LAW.

Forty-nine of the fifty states (Nevada being the only exception) have enacted in one form or another an

estate or inheritance tax statute. The inheritance tax statutes usually base the exemption permitted upon the degree of relationship between the beneficiaries of the decedent's estate and the decedent. Thus, in most states a larger exemption will be granted to a surviving spouse and to surviving children than to brothers, sisters, and other collateral relations.

Seven of the forty-nine states operate under estate tax statutes which closely approximate the estate tax provisions of the Internal Revenue Code (1954). The remaining forty-two states have adopted inheritance tax statutes or a combination of inheritance and estate tax legislation. In the latter case, however, the legislation has provided in each instance for exemptions based upon the degree of relationship between the beneficiaries and the decedent.

Of these forty-two states, twenty-five have expressly placed children and stepchildren in the same class for exemption purposes. (See appendix "A".) The weight of legislative precedent, therefore, suggests that in most instances where the question of exemptions to stepchildren has been contemplated by the legislatures of other states it has been the desire and intent of these legislatures to make no distinction between the relationship of a child to his or her natural parent and that of a stepchild to his or her stepparent.

Of the seventeen remaining states employing inheritance tax statutes, five have granted some degree of exemption to stepchildren thus exemplifying legislative

recognition, intention, and desire to afford this class some degree of favor. (See appendix "B").

It seems manifestly unfair to automatically disallow the statutory exemption to stepchildren who are in *loco parentis* merely because the statute is silent as to whether the word "children" *includes* or *excludes* such a class of beneficiaries, when so many sister states have considered the problem and solved it by expressly granting the exemption to this class to a greater or lesser degree. In cases of doubt, taxing statutes are construed in favor of the taxpayer. *Pacific First Federal Savings & Loan Association v. Pierce Company,* Supra; *People v. Snyder,* 353 Ill. 184, 187 N. E. 158, 88 ALR 1012; *Lewis v. O'Hair,* 130 S. W. 2d 379.

POINT III

JUDICIAL DECISIONS OF OTHER STATES EQUATING NATURAL CHILDREN WITH STEPCHILDREN SUPPORT THE VIEW THAT NO DISTINCTION SHOULD BE MADE BETWEEN NATURAL CHILDREN AND STEPCHILDREN WHO ARE IN *LOCO PARENTIS.*

An examination of some of the judicial decisions which have considered the problem of equating the natural parent - natural child reationship with that of stepparent - stepchild will be most helpful in determining the proper resolution to the problem in the instant case and in clarifying the exemption statute.

One of the leading decisions on this issue is *In re Bordeaux' Estate,* 37 Wash. 2d 561, 225 P. 2d 433. In

that case the court was asked to interpret a section of the inheritance tax statute of the State of Washington. While the question of the interpretation of the word "child" as including stepchildren was not directly before the court the decision does discuss the problem.

> "The law of Wisconsin seems to have been established by the case of *Renner v. Supreme Lodge of Bohemian Slavonian Benevolent Society*, 89 Wis. 401, 62 N. W. 80. This case construed the charter of a benefit society which provided that its purpose was 'to assist and give pecuniary aid to the widows and orphans of deceased members.' It was held that 'orphans' included a stepchild whom the deceased had designated as beneficiary. The case is not inconsistent with the theory of the jury and incest cases that the tie of affinity is broken upon the death of the spouse whose marriage created it; for it appeared that this spouse, the mother of the stepchild in the case, survived her husband. The tenor of its reasoning, however, was adopted in *Jones v. Mangan*, 151 *Wis.* 215, 138 N. W. 618, 621, a case in which the insured, a member of the association in question, named his stepmother as beneficiary in his benefit certificate, his natural father having died. The constitution of the association provided that an insured could designate his mother as beneficiary."
>
> "The court held that the word 'mother' included a mother by affinity, and further said: '***, it is obvious that in many cases the stepmother may have strong claims upon the child whom she cares for during minority, and no reason appears to us why such child should not have the right under the articles of association in this case to make the stepmother the object of his bounty."

"The stepmother was accordingly allowed to recover the fund in dispute. An especially interesting case belonging to this group is *Hummel v. Supreme Conclave Improved Order Heptasophs*, 256 Pa. 164, 100 A. 589, 590. This was an action brought by the designated beneficiary on a benefit certificate issued by a fraternal corporation to her deceased stepfather. The Maryland statute under which the association was incorporated provided that benefits could be made only to 'children.' The beneficiary's natural mother had died, and the court apparently regarded the affinity relationship between the daughter and her stepfather as terminated. But the court discussed the legislative purpose in enacting the statute, which it found to be "to afford an opportunity to a member to assist, after his death, one or more of his family or those who, though not related to him, are members of his household and hold like intimate relations with him"; and, basing its decision on this consideration, held that the legislature, in its use of the word 'children,' had not intended to confine itself strictly to a class related by blood or affinity. Its exact words were as follows: '***, we think that 'children' in the statute was intended to include those who stood in that relation to the head of the house, though not related by blood or affinity. In the case in hand, it is clear, under the evidence, that the plaintiff held the relation of child to the deceased. ***She had borne his name from infancy until her marriage, and, as the evidence conclusively shows, he had treated her from her infancy as his child.'"

Despite the absence of any attempt to comply with the formalities of adoption the rights and duties of a parent and child attach when one admits a child into

his family and acts as if he were the parent to the child. *Young v. Hipple,* 273 Pa. 439, 117 Atl. 182; *Trudell v. Leatherby,* 212 Cal. 678, 300 P. 7; *Daniel v. Tolon,* 58 Okla. 666, 157 P. 756.

Liability has been imposed upon a stepparent for medical services rendered to a stepchild on the ground that the stepfather had held the child out as a member of his family. *Monk v. Hurlburt,* 151 Wis. 41, 138 N. W. 59; *Cohen v. Lieberman,* 157 Misc. 844, 284 N. Y. Supp. 970 rev'd on other grounds 160 Misc. 310, 289 N. Y. Supp. 797.

One standing in *loco parentis* to another has the burden of disproving undue influence when a deed is made to him by the other without adequate consideration. *Daniel v. Tolon,* Supra; *Sargent v. Foland,* 207 P. 349, 352.

One standing in *loco parentis* to a child cannot hold in adverse possession to the child. *McLaughlin v. Morris,* 150 Ark. 347, 234 S.W. 259. Such a person, however, like the natural parent, is entitled to the services of the child and an in *loco parentis* relationship has been held to create an insurable interest. *Carpenter v. U. S. Life Insurance Company,* 161 Pa. 9, 28 Atl. 943.

A child may not recover from a foster parent money received by the latter on account of services performed by the child for strangers. *Sparks v. Hinckley,* 78 Utah 502, 5 P. 2d 570; *Burdick v. Girmshaw,* 113 N.J. Eq. 591, 168 Atl. 186.

A foster parent may maintain the action available to a natural parent for the loss of services caused by

negligent injury or battery to a stepchild or by seduction of such a child. *Stoddard v. Campbell,* 7 Ga. App. 363, 108 S.E. 311; *Wessell v. Gerken,* 36 Misc. 221, 73 N.Y. Supp. 192. Conversely, the extension of the master servant principles involved in the family purpose doctrine as to automobiles has operated to impose liability on one who stands in *loco parentis* to another. *McGee v. Crawford,* 205 N.C. 318, 171 S.E. 326; *Jones v .Cook,* 96 W. Va. 60, 123 S.E. 407.

Where a testator stands in *loco parentis* to a legatee the latter has been treated similarly to a natural child, in that interest payments are allowed from the date of death of the decedent rather than from the date when payment of the legacy is due. *Brown v. Knapp,* 79 N.Y. 136; *Von Der Horst v. Von Der Horst,* 88 Md. 127, 140, 41 Atl. 124, 125.

A gift intervivos to one standing in *loco parentis* may cause an ademption of a pecuniary legacy. *Ellard v. Ferris,* 91 Ohio St. 339, 348, 110 N.E. 476, 479.

Services rendered to an infant or the maintenance of an infant provided by a stepparent or another person standing in *loco parentis* are presumed to be gratuitous, treating such children as natural children for that particular legal relationship. *Livingston v. Hammon,* 162 Mass. 375, 38 N.E. 968; *Williams v. Hutchinson,* 3 N.Y. 312.

The commentator in 7 ALR 2d at page 91 speaking of gratuitous services of stepchildren performed for a

stepparent states that if the parties assume the relationship of parent and child the general presumptions and implications arising from that relationship may be applicable with respect to a claim for services rendered by one to the other;

> "in *Livingston v. Hammon,* 162 Mass. 375, 38 N. E. 968, it is said: 'A man is not bound to maintain the children of his wife by a former marriage, but if he chooses to receive them into his family and to assume the relation of a parent to them in their daily life, the law will not imply a contract on his part to pay them for services which they render him while members of his family, or a contract on theirs to pay him for their maintenance . . . . . *The law approves and encourages the assumption of such a relation, as promotive of the best interests of all parties by uniting them in an orderly family life.* If nothing more appears than helpfulness in such relations, it will not permit an implication of a contract to make compensation in money on either side. It will presume, also, that what was done proceeded from a higher attribute of human nature than the desire to bargain and get gain, namely an unselfish love of a parent for his children and of the children for their parent. Of course there may be circumstances in any case which will rebut the ordinary presumption from the residence together in the same family of persons so related, and will call for an inference that the stepfather was not acting in *loco parentis,* but in a different relation.' (underscoring supplied.)
>
> "In *Smith v. Rogers,* 24 Kan. 103, Am Rep 254, it is declared that if a stepfather voluntarily assumes the care and support of a stepchild he stands in *loco parentis,* and the presumption is that they deal with each other as parent and

child, and neither compensation for board is presumed on the one hand, nor for services on the other. To the same effect see *Longhofer v. Herbel,* 33 Kan. 278, 111 P. 423, in which it is stated that presumptively a minor living with his stepfather is not to be paid for his labor.

> "A statute referred to in *Daniel v. Tolon,* 53 Okla. 666, 157, P. 756 provides that 'a husband is not bound to maintain his wife's children by a former husband; but if he receives them into his family and supports them, it is presumed that he does so as a parent, and where such is the case, they are not liable to him for their support, nor he to them for their services.' "

Another field which aids in shedding light on the instant problem is that of child v. parent in tort actions.

In *Trudell v. Leatherby,* Supra, plaintiff brought an action against his stepmother for negligently operating an automobile in which plaintiff was riding as a passenger. The court, in denying the plaintiff's right to maintain the suit, stated the reason for the negative rule was to avoid a disruption of the peace and harmony of the members of a household and that

> "the same vexatious conditions created in the family circle by litigation between parent and child, would result from like litigation instituted by a minor has been taken into and is a member of the household of the latter."

Similarly, in *McKelvey v. McKelvey,* 111 Tenn. 388, 77 S.W. 664, the court dismissed the suit by a minor against the minor's father and stepmother for cruel and inhuman treatment, basing its decision upon the same

reasoning as employed by the court in the *Trudell* case, supra.

In some jurisdictions, however, courts will permit tort actions to be brought by a natural child against his parents and in those jurisdictions, a stepchild as well as a natural child may recover for the tortious acts of his stepparents.*Treschman v. Treschman,* 28 Ind. App. 206, 61 N.E. 961 (action brought for assault and battery committed by the defendant on his stepdaughter).

It is of no moment that some jurisdictions permit recovery for the tortious acts of a parent or stepparent and that some deny recovery. What is noteworthy is that in either allowing or disallowing recovery, the courts are consistent in their attitude to both natural children and those standing in *loca parentis* (stepchildren).

Finally, the decisions involving reimbursement for funeral expenses shed light upon the judicial interpretation of the stepparent — stepchild relationship. While there are exceptions to the rule, it is quite generally recognized that a third person, other than the personal representative or surviving spouse, who pays the funeral expenses of a decedent is entitled to reimbursement therefor from the estate, provided he did not act officiously, as a volunteer or as a meddler. This rule appears to be based on the necessity of burial in most instances before the selection of a personal representative or even before the discovery of a will. Here again the courts have fully equated the stepparent — stepchild relationship with that of a parent and his natural child. *Kelly v. Snow,*

163 Minn. 298, 210 N. W. 105 (decedent's stepdaughter who employs an undertaker and pays for the bill is entitled to reimbursement from the estate of the deceased); *Lay v. Lay,* 201 Ky. 93, 255 S.W. 1054 (decedent's stepson who paid the burial expenses was entitled to reimbursement from the estate). In both of these cited cases the courts, in arriving at their respective decisions, saw no reason for distinguishing between the stepparent — stepchild relationship and that of the parent — child.

It is apparent from the above that the contention of the estate of Herbert E. Sargeant is soundly based upon judicial precedent in many diverse contexts of law.

POINT IV

THE EFFECT OF THE STATUTORY EXEMPTION IS TO ENCOURAGE TESTATORS AND TESTATRIXES TO LEAVE THEIR ESTATES TO MEMBERS OF THEIR IMMEDIATE FAMILY.

There is a social value in encouraging a man or woman to leave his or her estate to members of the immediate family. Whether the idea of encouraging families to take care of their own is a distortion of the historical hangovers from the early English law or whether the idea has come into our law through a rational process and judicial development is of very little significance for this problem. The encouragement is a natural consequence of the exemption and should therefore be recognized and guided by an equitable application of the law which brought it into effect.

The statute which allows a surviving widow to choose a statutory share of her husband's estate thereby negativing his efforts to leave her less than one-third of his estate has a similar effect to the exemption statute of keeping widows and dependents off the doles of the state. 74-4-1 et seq. Utah Code Annotated (1953). The exemption in the tax statute, 59-12-2 Utah Code Annotated (1953) should not be applied in such a manner as to defeat this beneficial social effect.

In many instances stepchildren are distinguished from natural children only by blood and name. In very many instances the family bonds of affection and parental sentiment are stronger between in *loco parentis* stepchildren and stepparents than between natural children and natural parents. Stepchildren who have lived in *loco parentis* to a decedent are in as great a need of support

The parental sentiment, motives and desires of the typical testator or testatrix who leaves part or all of his or her estate to in *loco parentis* stepchildren must certainly be the same as the parental sentiment, motives and desires of a natural parent who leaves his or her estate to natural children. It is conceivable that some decedents have known no other family (in the sense of children) besides his or her in *loco parentis* stepchildren. In such a situation the decedent may intend to leave his or her estate to the only immediate family known to him or her with all the benefits the law allows for transfers made to the family. If a testator has such a desire it should not be frustrated by the State Tax Commission concluding that these children are not really his/or her family because they do not have the proper blood ties.

The beneficial efect of the statute will be applied more equitably and the intention of the typical testator or testatrix will be fulfilled rather than frustrated if the statutory exemption is allowed to in *loco parentis* step-children.

POINT V

THE STATUTORY EXEMPTION MAY BE APPLIED BY THE COMMISSION WITH EASE AND IN AN EQUITABLE MANNER BY INCLUDING STEPCHILDREN WHO ARE IN *LOCO PARENTIS* TO A DECEDENT.

"In *loco parentis*" has a fairly definite meaning; Black's law dictionary defines "in *loco parentis*" as "in the place of a parent; instead of a parent; charged, factitiously with a parent's rights, duties, and responsibilities." *Weatherby v. Dixon,* 19 Ves 412; *Brinkerhoff v. Merselis,* 24 N.J. Law 863; *Capek v. Kropik,* 129 Ill. 509, 21 N.E. 836; *Flinn v Sonman Shaft & Coal Company,* 33 A 2d 525, 153 Pa. Super 76.

Generally, one who takes a child into his home and treats it as a member of his own family, educating and supporting it as if it were his own child is standing in *loco parentis* to that child. The test is whether the person intends to place himself in the position of a lawful parent with all the obligations and responsibilities of such a position.

To assume the in *loco parentis* relationship the following facts must be shown to exist: (1) The person in the role of parent must consciously intend to assume the relationship; (2) He must actually fulfill the obligations

of a parent by supporting and otherwise providing for the child; (3) The person with whom the relationship is sought to be established must be a minor or a person in need of parental support because of physical handicaps. *Bourbeau v. U. S.* 76 F Supp. 778, 779; *Trotter v. Rollan,* 311, S.W. 2d 723, 729; *Brovdy v. Jones and Laughlin Steel Corporation,* 21 A. 2d 437, 438, 145 Pa. Super 602; *In re Lutz Estate,* 107 NYS 2d 388, 392, 394, 201 Misc. 539.

Since the relationship has been judicially defined, Sec. 59-12-2 Utah Code Annotated (1953) can be applied just as easily by including such children as by including only natural children. The State Tax Commission may identify very readily children in *loco parentis* to a decedent just as they now identify natural children. The judiciary has been equal to such a task in other contexts of the law as referred to in Point Number III.

POINT VI

CLARIFICATION OF THE EXEMPTION STATUTE IS THE DUTY OF THE JUDICIARY.

Very often the legislature does not consider all of the contingencies which may occur and the possible refinement which may be argued with respect to a statute drafted and put into effect. Subsequently it is discovered that a law may be applied inequitably or that a loop hole exists making it possible for the astute to avoid its application to them. In such instances the judiciary must clarify and define the law closing the loop holes and

clearing inequitable restrictions. The judiciary must meet this task or our system of law will become an ineffective institution for governing social and business relationships (in the general sense). The legislature *may* clarify a law and *may* express its intention but usually only after pressure is brought to bear upon it from sufficient numbers of those affected or simply by the greviousness of an obvious error being exposed to public view. The type of injustice with which we are concerned in the instant case is not a palpable one nor does it affect a large group of legislative constituents at any given time. The application of the tax exemption statute by the State Tax Commission as in the instant case nips its victims one or two at a time and their cries for relief are not easily heard by a preoccupied, loosely guided, legislature.

Justice will be served in the instant case and the law will continue to fulfill its proper function by a judicial carification of Section 59-12-2, Utah Code Annotated (1953) in favor of an exemption to stepchildren who are in *loco parentis* to a decedent.

CONCLUSION

Since there is a statutory exemption allowed in favor of "children" but those who qualify as coming within the meaning of that term are not identified clearly by the statute itself nor by legislative history, and since there are no judicial decisions in the State of Utah identifying with clarity the "children" to whom the statutory exemption should apply, a proper resolution to the problem involved requires an examination of similar statutes of

other jurisdictions, and the judicial decisions of other states. A deep reflection upon the effect of allowing an exemption to anyone is also necessary to a proper resolution of the instant problem.

Upon our examination and reflection the correct resolution seems to stand out boldly in favor of allowing the exemption to stepchildren who are in *loco parentis* as well as to natural children and children by adoption.

The taxing statutes of the various sister states as well as judicial decisions in other contexts of the law support a view of allowing stepchildren in *loco parentis* the exemption. Therefore, the way is clearly marked by similar actions of the legislatures of sister states, by the judicial decisions of the same, in equating natural children and stepchildren in other contexts of the law and by a review and reflection of the effect of the statutory exemption in encouraging testators and testatrixes to leave their estates to the immediate family. The State Tax Commission's decision disallowing the exemption must be reversed for the foregoing reasons.

Respectfully submitted,

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APPENDIX A

STATES WHICH PROVIDE SAME CLASSIFICATION UNDER INHERITANCE TAX LAWS FOR CHILDREN AND STEPCHILDREN.

Alaska — Class 1: Wife, husband, lineal issue, adopted or mutually acknowledged child or children of decedent or their lineal issue.

Sec. 43, 30, 43.50 Alaska Statutes Annotated (1962).

California — Class A: Husband, widow, lineal issue, lineal issue of adopted or mutually acknowledged child, adopted child of any lineal issue or child mentioned in Class A.

Secs. 13307-13310 and 13404-13407 California Codes Annotated.

Colorado — Class A: Parents, spouse, children, stepchildren, children adopted during their minority, any lineal descendant.

Sec. 138-3-14 Colorado Revised Statutes (1963)

Idaho — Class 1: Husband, wife, lineal issue, lineal ancestor, children adopted in conformity with Idaho laws, or mutually acknowledged children or their lineal issue.

(Secs. 14-1406 to 14-1408) Idaho Code

Illinois — Class A: By blood or adoption: Parents, lineal ancestors of decedent, husband, wife, children, brothers, sisters, wife or widow of a son, or the husband or widower of a daughter, descendants of decedent, mutually acknowledged children of decedent, and, as to estates of decedents dying on or after July

11, 1951, descendants of mutually acknowledged children.

Sec. 120-375-5 Illinois Annotated Statutes

Indiana — Class A: Spouse, children under 18 years of age, other lineal issue, lineal ancestor, acknowledged or adopted children, lineal descendant of acknowledged or adopted children.

Sec. 7-2402 Indiana Statutes Annotated (as amended 1965)

Kentucky — Class A. Parent, surviving spouse, child by blood, stepchild, adopted child (if adopted during infancy), grandchild (issue of a child by blood, of a stepchild or of a child adopted during infancy).

Sec. 140.070. Kentucky Revised Statutes.

Louisiana—Class A: Direct descendant, by blood or affinity, ascendant or surviving spouse.

Sec. 47-2401-2402 Lopisiana Revised Statutes (1950).

Maine — Class A: Husband, wife, lineal ancestor, lineal descendant, adopted child, stepchild, adoptive parent . . .

Sec. 36-3462-3464 Main Revised Statutes Annotated

Michigan — Class 1: Husband, wife, grandfather, grandmother, father, mother, child, brother, sister, wife or widow of son, husband of daughter, adopted child, mutually acknowledged child, lineal descendant.

Sec. 205.202 Compiled Laws of Michigan

Minnesota — Class A: Widow, minor or dependent child, and minor or dependent legally adopted child. Class B: Husband, adult child or other lineal descendant,

adult legally adopted child or issue, lineal ancestor and mutually acknowledged child or issue.

Sec. 291.03 (2) Minnesota Statutes

Montana — Class 1: Wife, husband, lineal ancestor, lineal issue, adopted child, mutually acknowledged child, and lineal issue of adopted or mutually acknowledged child.

Sec. 91.4409 Revised Codes of Montana

Nebraska — Class 1: Father, mother, husband, wife, child, brother, sister, wife or widow of a son, husband of a daughter, adopted children, lineal descendant born in lawful wedlock or legally adopted, or acknowledged children where the relationship has continued for a specified time.

Sec. 77-2004 Revised Statutes of Nebraska

New Jersey — Class A: Parent, grandparent, spouse, child or adopted child or his issue, stepchild or child mutually acknowledged as child for 10 years beginning before 15th birthday.

Sec. 54.34-2.1 Revised Statutes of New Jersey

New York — While New York does not have classes of exemptions in the formal sense, children and stepchildren are permitted exemptions of $5,000.

Tax Sec. 249-Q Consolidated Laws of New York

North Carolina — Class A: Wife, husband, lineal issue, adopted child, stepchild, and lineal ancestor.

Sec. 105-4 General Statutes of North Carolina

North Dakota — (b) Lineal ancestor or descendant, adopted child, stepchild or its lineal descendant, if a minor.

(c) Lineal ancestor or descendant, adopted child, stepchild or its lineal descendant, if not a minor.

Sec. 57-37-11 North Dakota Century Code Annotated

Oregon — Class 1: Grandparents, parents, spouses, children, stepchildren, or lineal descendants.

Ch. 418, Laws of 1959 Amending Sec. 12-118 of Oregon Revised Statutes

Pennsylvania — Class A: Grandparents, parents, spouse, lineal descendants (including children and their descendants, adopted descendants and their descendants, stepchildren . . .) . . .

Sec. 72-2485-403—72-2485-405 Pennsylvania Statutes Annotated

South Dakota — Class 1: Wife, husband, or lineal issue, legally adopted child, mutually acknowledged child to whom decedent for not less than ten years stood in the relation of parent, provided the relationship began at or before the child's fifteenth birthday.

Sec. 57.2402 South Dakota Code (1960 Supplement)

Vermont — Class 1: Husband, wife, child, father, mother, brother, sister, grandchild, wife or widow of son, husband of a daughter, adopted child, stepchild, child of such adopted child or stepchild, other lineal descendant.

Sec. 32-6541 Vermont Statutes Annotated.

Virginia — Class A: Father, mother, grandfathers, grandmothers, husband, wife, children by legal adoption, stepchildren, grandchildren and all other lineal ancestors and lineal descendants.

Sec. 58-153 Code of Virginia (1950)

Washington — Class A: Lineal ancestor, lineal descendant, husband, wife, stepchild, or lineal descendant of a stepchild, adopted child or lineal descendant of an adopted child, adopted child of the lineal descendant, son-in-law, or daughter-in-law of decedent.

Sec. 83.08.020 — 83.08.040 Revised Code of Washington

West Virginia — Class 1: Spouse, children, stepchildren, descendants of children, parents.

Sec. 845 (d) West Virginia Code Annotated (1955)

Wisconsin — Class 1 (c): Lineal issue, lineal ancestor, adopted child, mutually acknowledged child, lineal issue of adopted or mutually acknowledged child. . . .

Sec. 72-02 Wisconsin Statutes

APPENDIX B

STATES WHICH PROVIDE DIFFERENT CLASSIFICATION UNDER INHERITANCE TAX LAWS FOR CHILDREN AND STEPCHILDREN.

Connecticut — Class A: Children

Class B: Stepchildren

Sec. 12-344 General Statutes of Connecticut

Iowa — Class 1: Children

Class 2: Stepchildren

450.9-450.10 Code of Iowa (1962)

Massachusetts — Class A: Children

Class C: Stepchildren

Sec. 65-1 Massachusetts Laws Annotated

Ohio — Class A: Children

Class C — Stepchildren

Sec. 5334 Ohio General Code Annotated

Rhode Island — Class 1: Children

Class 2: Stepchildren

Sec. 44-22-8 General Laws of Rhode Island